

REMARKS

Applicant respectfully submits that no new search is required based on the claim amendments herein, and that no new matter has been added. Applicant requests reconsideration of the above referenced patent application in view of the amendments and remarks set forth herein, and respectfully request that the Examiner withdraw all rejections. Claims 1, 4, 5, 11, 14, 15, 21, 24 and 25 have been amended. Claims 2, 3, 12, 13, 22 and 23 have been canceled without prejudice. No claims have been added. Thus, claims 1, 4-11, 14-21 and 24-30 are pending.

Priority of Invention

The Office Action considers the previously-submitted 37 C.F.R. §1.131 affidavit of Steven L. Grobman and Exhibit A to be ineffective to overcome *Teicher et al.*, US Patent Pub. 2004/0236958 (hereinafter “*Teicher*”). In particular, the Office Action asserts that Applicant improperly purports to explain or interpret the disclosure by stating that “OB” stands for “Own blob” and “PB” stands for “Partner’s blob”. Applicant is confused by this argument and by the reference to *In re Buchner*, 929 F.2d 660, 18 USPQ2d 1331 (Fed. Cir. 1991) insofar as they seem to relate to rejections under 35 U.S.C. §112, ¶1, rather than to the 35 U.S.C. §102 rejection at issue. *See, e.g.*, M.P.E.P. §716.09. Applicant is further confused by this argument, insofar as Applicant is not interpreting or explaining the disclosure, but rather pointing to the figure on page 4 of Exhibit A, which clearly depicts “Own Blob (OB)” and “Partner’s Blob (PB).”

Nevertheless, without agreeing in any way as to the alleged priority of *Teicher*, and in order to advance prosecution of the application to allowance, Applicant presents arguments below to distinguish Applicant’s claimed invention from the *Teicher* reference. Applicant reserves the right to argue the priority of the claimed invention over *Teicher* in any future prosecution of the application.

35 U.S.C. §102 Rejections

35 U.S.C. §102(e) Rejection over *Teicher*

The Office Action rejects claims 1-30 under 35 U.S.C. §102(e) as being anticipated by *Teicher*. A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference, wherein the identical invention is shown in as complete detail as is contained in the claim. See M.P.E.P. §2131. The Office Action alleges that *Teicher* discloses, *inter alia*, penalizing a peer if a second validity data is not timely received from the peer. Claims 2, 3, 12, 13, 22 and 23 are canceled herein, rendering moot the above rejection as applied thereto. For at least the following reasons, Applicant traverses the above rejection as applied to currently pending claims 1, 4-11, 14-21 and 24-30.

Claims 1, 11 and 23 are amended herein to recite the limitations of canceled claims 3, 13 and 23, respectively. Claims 4, 5, 14, 15, 24 and 25 are amended to accordingly adjust claim dependencies. Therefore, the currently amended claims **only** present combinations of claim limitations which have been **previously** presented, and **no new search is required**. Assuming *arguendo* that *Teicher* is a prior art reference, which Applicant does not agree, *Teicher* still **fails** to expressly or inherently describe all limitations of the claimed invention.

The above rejected claims include independent claims 1, 11 and 21. Independent claim 1 is amended herein to recite in a salient portion (emphasis added):

“...requesting second validity data from the peer to determine whether the first backup data is preserved by the peer, wherein the second validity data is based on the first backup data stored by the peer and the first key;

penalizing the peer if the second validity data is not timely received from the peer;...”

Each of currently amended claims 11 and 21 includes similar claim limitations. These claim amendments are supported in the original disclosure at least by original claims 2, 3, 12, 13, 22 and 23. Applicant respectfully submits that each of claims 1-30 is not

anticipated by *Teicher*, based at least on the failure of the reference to teach one or more limitations in each of independent claims 1, 11 and 21. More particularly, *Teicher* fails to disclose penalizing the peer if the second validity data is not timely received from the peer, as variously recited in the claims.

Teicher describes a method for storing a backup key in a backup medium. See Abstract. Paragraph [0010] of *Teicher* discusses a backup medium, separate from a first portable storage device, wherein data are stored as encrypted backup data after having been encrypted using a backup key. In rejecting previous claims 2, 12 and 22, the first Office Action of October 13, 2006 states that paragraphs [0097] and [0099] disclose penalizing the peer if the second validity data is not timely received from the peer. However, a review of these passages finds no such disclosure. Paragraph [0097] **only** discusses three preferred methods for storing backup key copy 140 and retrieving a backup key from an internet server 140A. Paragraph [0099] **only** discusses a possible reason for needing to encrypt already-encrypted contents for storage in a backup medium 120. However, **nothing** in paragraphs [0097] and [0099] either disclose or is otherwise related to penalizing a peer if a second validity data is not timely received from the peer. The latest Office Action **fails** to provide any new basis for *Teicher* disclosing penalizing a peer if a second validity data is not timely received from the peer, and a review of the reference shows that no such disclosure is to be found.

Applicant submits that *Teicher* **fails** to disclose any penalizing of a peer based on an untimely receiving of validity data, as variously recited in the claims. For at least the foregoing reasons, *Teicher* fails to disclose at least one claim limitation in as complete detail as set forth in each of independent claims 1, 11 and 21. In depending directly or indirectly from one of these independent claims, each of dependent claims 4-10, 14-20 and 24-30 incorporates at least one limitation not taught by the reference. Therefore, Applicant requests that the above 35 U.S.C. §102(e) rejection of claims 1, 4-11, 14-21 and 24-30 based on *Teicher* be withdrawn.

CONCLUSION

For at least the foregoing reasons, Applicant submits that the objections and rejections have been overcome. Therefore, claims 1, 4-11, 14-21 and 24-30 are in condition for allowance and such action is earnestly solicited. The Examiner is respectfully requested to contact the undersigned by telephone if such contact would further the examination of the present application. Please charge any shortages and credit any overcharges to our Deposit Account number 02-2666.

Respectfully submitted,
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